IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

REDMAN & ASSOCIATES, LLC,

Plaintiff,

v.

SALES CHIEF ENT. (HONG KONG) CO., LTD.,

Defendant.

Case No. 14-CV- 5277 TLB

COMPLAINT

Plaintiff Redman & Associates, LLC ("R&A") brings this action against Defendant Sales Chief Ent. (Hong Kong) Co., Ltd. ("SC"), for breach of contract, tortious interference with business relationship, misappropriation and misuse of trade secrets, and breach of warranty of non-infringement. In support, R&A states:

JURISDICTION AND VENUE

1. This is a diversity action, and subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332. R&A is a limited liability company organized and existing in Arkansas, and its principal place of business is located in Rogers, Arkansas. SC is a foreign corporation organized and existing under the laws of the Republic of China, and its principal place of business is located in the Republic of China. The amount in controversy exceeds $75,000.00.

2. This Court has personal jurisdiction over SC, both generally and specifically. SC continuously and systematically conducts business in Arkansas, including SC's sales to R&A exceeding $62 million since March 2012. SC conducts business in Arkansas that specifically relates to the facts and claims of this lawsuit. Representatives of SC regularly travel to Arkansas to conduct business with R&A, and such representatives of SC are in fact presently in Arkansas at the time of the filing of this lawsuit. SC has also engaged in tortious acts within Arkansas which have caused and are causing injury to R&A in Arkansas. SC has purposefully availed itself of the benefits and protections of the laws of the United States and Arkansas, and it was reasonably foreseeable that it would be subject to legal process within this state.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to R&A's claims occurred in this judicial district. R&A has its principal place of business in this district. The toy business at the center of this dispute is predicated on selling toys to Wal-Mart Stores, Inc., the headquarters of which are also located in this district. The contract in suit was formed, executed, and partially performed in Arkansas. The business relationship with which SC has tortiously interfered is a relationship between two residents of this judicial district, R&A and Wal-Mart. The trade secrets that SC has misappropriated are held in this judicial district. Most of the witnesses are located in this judicial district.

PARTIES

4. Plaintiff Redman & Associates, LLC ("R&A") is an Arkansas limited liability company with its principal place of business in Rogers, Arkansas. R&A is a family-owned business that sells consumer products—mostly toys—through its retailing partners, including

Wal-Mart. R&A also provides consulting services in the areas of production, retail, and supply chain management.

5. Defendant Sales Chief Ent. (Hong Kong) Co., Ltd. ("SC") is a corporation organized and existing under the laws of the Republic of China with its principal place of business located at 11F-3, No. 21, Sec. 6, Zhongxiao E. Rd., Nangang District, Taipei 115, Republic of China. SC is a manufacturing behemoth. It manufactures and exports large volumes of consumer goods to the United States and across the world. Products it manufactures are sold throughout this judicial district in numerous retail stores.

BACKGROUND

The Parties' Relationship Prior to 2014

6. R&A supplies consumer products to various retailers in the United States, including Wal-Mart. R&A's main product line is children's battery-powered ride-on toys sold under the R&A label and also under the Monster Trax® brand.

7. Since March 2012, R&A has contracted with SC to manufacture the ride-on toy products. R&A purchases the products from SC on commercially reasonable terms of credit, which allows R&A a period of time to receive and distribute the goods and collect payment from its customer given the seasonal component of toy sales.

8. Credit is essential to the flow of goods in international commerce on unique items such as toys, where market demand fluctuates on a seasonal basis. There is an inevitable lag in cash flow caused by the timeline associated with manufacturing the goods, shipping the goods overseas, importing the goods through customs, distributing the goods to the customer, and receiving payment on the goods.

9. For the first two years of R&A and SC's importing business relationship, R&A's purchases from SC were financed with trade credit on "Net 60" terms. This means that R&A was not required to pay SC for goods until 60 days after the goods were shipped from China ports and invoiced.

10. The Net 60 term was a fundamental and material term of the parties' ongoing business arrangement and agreement, beginning with the parties' very first order on March 12, 2012. The parties engaged in dozens of multi-million dollar transactions pursuant to their agreement, and SC always adhered to the Net 60 financing term.

11. The toy industry is seasonal, with the overwhelming bulk of retail sales occurring in the holiday season. Toy suppliers and retailers must make an annual plan and prepare months in advance to meet the holiday sales projections for toys. For toy suppliers like R&A, products are manufactured in China and shipped to the United States beginning in early summer. A substantial volume of product is prepared between May and July of a given year in anticipation of fall events including the Black Friday blitz.

12. Due to the high value of the goods flowing from SC to R&A on a continuous yet seasonal basis, at any given time in ramp up for the holiday shopping season R&A's account balance with SC is typically $10 million or more. For example, in July 2012, R&A's account balance with SC was $9.7 million (excluding offsets); in July 2013, R&A's account balance with SC was $12.7 million (excluding offsets); and in July 2014, R&A's account balance with SC was $12.5 million (excluding offsets). Account balances exceeding $12 million are not unusual in the course of the parties' dealings, given the large volume of product either in transit or on the store shelves.

13. The Net 60 credit terms allowed both parties to streamline logistics and maximize revenue for the benefit of both. To give proper context to this dollar amount, during the period of March 2012 to August 2014, R&A purchased and paid for goods from SC exceeding $62 million.

14. The relationship was highly profitable for SC. In fact, SC was so pleased with its partnership with R&A that SC requested to make the relationship exclusive; R&A agreed to not work with any manufacturing competitor of SC on the same or similar toy products so long as SC agreed to not manufacture similar products for any competitor of R&A. Doing this further connected SC and R&A. SC knew it was the sole supplier to R&A and would thereafter use that fact to its unfair leverage and benefit.

History of the R&A "Made in USA" Campaign

15. On October 7, 2013, Arkansas Governor Mike Beebe announced that R&A and Wal-Mart were joining together to bring home manufacturing jobs from overseas. R&A agreed to invest more than $5 million in a new manufacturing and distribution facility in Rogers, Arkansas, which would employ not less than 74 people with an average hourly wage exceeding $18. A study by the University of Arkansas estimated the business would pump $3 million back into the local economy once it became fully operational and that every new manufacturing job created would support four other jobs that provide services to R&A.

16. Last year, R&A sold 1.1 million battery powered ride-on toys in the United States as made in China working with SC. R&A announced its plans to begin local production on a smaller scale, with the ultimate goal to transition manufacturing of the 6-volt toys completely away from China to the United States over a three-year period.

17. The announcement in October received worldwide publicity. It kick-started Wal-Mart's national campaign to source $50 billion in U.S. made goods over the next ten years. R&A's public commitment to build its Arkansas based manufacturing facility served as a cornerstone for this monumental "on shoring" effort.

18. After R&A announced intentions to begin manufacturing in the United States, R&A made clear to SC that it would need SC's continued cooperation over a three-year period to smoothly transition manufacturing of the 6-volt toys to America.

19. The parties had successfully navigated through years of annual demand cycles, including the holiday seasons. The Net 60 credit terms always applied.

20. SC promised continued cooperation and agreed to move forward in 2014. R&A elected to keep SC as the exclusive supplier for toys based upon the history of performance between the parties and SC's assurances of continued cooperation in manufacturing and shipping adequate product to meet market demands in 2014.

21. The parties formulated a comprehensive production schedule to serve Wal-Mart's retail needs for both the 6-volt and 12-volt ride-on toys in 2014.

22. The parties agreed to a customary production schedule, and from January through April 2014, the same reasonable terms of credit were accorded multiple shipments of new product.

23. At the end of February 2014, R&A received additional publicity surrounding R&A's expectations to begin local manufacturing on a limited scale in April 2014.[1] The Arkansas Business article reported how R&A estimated making 100,000 of the 6-volt toys in

[1] http://www.arkansasbusiness.com/article/97280/wal-marts-pledge-met-with-hope-skepticism

2014, 300,000 units in 2015 and 600,000 units in 2016. The first product to be made by R&A is a "Captain America" 6-volt toy, which is symbolic to introduce the Made in USA program.

24. SC learned of these plans in March and put in motion a plan of its own.

Sales Chief's Strategy to Stop the Made in USA Campaign

25. Evidently, Chinese manufacturers are extremely resistant to any effort by American companies to re-domesticate manufacturing. According to the U.S. Census Bureau, in 2013 the United States imported more than $440 billion in goods from China, nearly four times as many goods as China imported from the United States.

26. Preserving this severe trade imbalance is arguably the most important national objective of China. China has risen to worldwide prominence, particularly in the economic realm, by diverting manufacturing jobs from the United States. Its status as an emerging superpower is highly dependent on it maintaining domination over American manufacturing.

27. SC is on the front lines of the Chinese manufacturing industry, and it has made known that it intends to disrupt and undermine any efforts to relocate manufacturing back in the United States. During in-person meetings with R&A representatives in 2014, which were after the parties had committed to a production schedule for 2014, SC's executive director, Ellen Liu, made clear her intention to derail the Made in USA initiative.

28. SC's executive director said that both R&A and Kent Bicycles (a South Carolina-based vendor of bicycles who, like R&A, is joining with Wal-Mart to re-domesticate manufacturing) were receiving lots of adverse attention and scrutiny in China because of the anticipated loss of business for Chinese companies.

29. Between March 14 and May 10, SC shipped more than $3.4 million in inventory for arrival in the United States. As was customary, R&A was to pay the shipping costs and other logistics costs.

30. On May 24, SC abruptly and unilaterally revoked all trade credit terms. SC demanded immediate and full payment for all inventory on the water and in port, meaning that R&A must prepay for all goods before any additional goods would be released to R&A. This included goods already booked and shipped to the United States according to the production schedule.

31. SC's revocation of credit in May was deliberately timed to cause maximum disruption in R&A's business.

32. SC has completely stopped the flow of goods and will no longer release any goods to R&A under their contract. The consequences of SC's refusal to release the goods are extreme. Foremost, it disrupted R&A's supply chain, impeding R&A's ability to fulfill its own sales commitments and generate revenue and cash. This has directly caused a loss of past and future profits for R&A. The inability to fulfill sales commitments also exposed R&A to liability from its customers. R&A worked to obtain financing and additional methods of payment in order to continue the flow of supply and was able to make payment to release a substantial amount of goods. However, R&A was forced to deplete much of its working capital and credit during this period to maintain for Wal-Mart an uninterrupted supply of goods, SC's material breach notwithstanding.

33. By shipping the goods but not releasing them without up-front payment, SC also damaged R&A on the cost side of its business because R&A was required to pay freight charges for the overseas shipments even though the goods were not released to R&A. Today there are

goods that are being held and which are accruing additional storage costs. R&A has incurred and continues to incur excessive storage and demurrage fees associated with product that SC shipped but did not timely release. These freight and logistics costs are by far the single largest overhead expense in R&A's business.

34. R&A's agreement to pay freight, storage and other logistical fees was contingent upon the goods being released to R&A. R&A now faces claims from third party freight, storage and logistical vendors for fees associated with the inventory over which SC continues to exercise dominion and control. The fees already exceed $1.4 million and continue to rise, and SC should be held responsible for reimbursing R&A for all such fees.

35. The overall effect of SC's unilateral actions is to damage R&A's ability to conduct business by fundamentally changing the terms of credit in a way designed to maximize the cash flow disruption to R&A.

36. SC is a seasoned importer who understood that it would devastate R&A's ability to continue business as usual by materially changing the credit terms and disrupting the flow of goods at a critical point during the annual toy distribution cycle. SC's purpose was to obstruct R&A's cash flow to prevent the startup Made in USA manufacturing business from having enough funds to begin operations.

37. Although SC and R&A had enjoyed a highly profitable and successful business relationship for several years, SC is now singularly motivated to frustrate R&A's business model.

38. SC desires to make an example of R&A, with the larger goal of forestalling Wal-Mart's on-shoring efforts before they get off the ground.

39. To that end, SC is continuing to deny R&A meaningful trade credit, in breach of the parties' legally enforceable agreement in place prior to when the millions of dollars of goods were shipped to the United States. The consequence is that R&A is unable to import the goods, unable to sell the products already shipped, and unable to find alternative sources of product this late in the order placement process in time for the holiday season. Because R&A's domestic manufacturing had only begun on the production of a "Captain America" 6-volt ride on, R&A had no other options to fill the remaining products. R&A therefore cannot deliver goods to Wal-Mart as ordered without suffering substantial cost overruns.

40. In suddenly refusing the trade credit terms the parties had previously established, SC intended to cause severe financial problems for R&A, with the ultimate goal of ruining R&A's business before the domestic manufacturing can commence.

41. SC's unilateral change of terms constitutes a material breach of the parties' agreement that has caused substantial damage to R&A, including but not limited to the loss of sales to Wal-Mart on already-booked goods, the incurrence of numerous costs associated with goods that were booked but never released, and most importantly, the loss of the manufacturing business which represents a wide range of damages including the loss of future profits and business opportunity.

Sales Chief's Interference with Redman's Vendor Relationship

42. SC is keenly aware of the nature of R&A's business relationship with United States retail outlets, including Wal-Mart. SC is keenly aware of the demands of Wal-Mart because it has completed many seasons with R&A for these products.

43. SC's overarching objective is to stop the entire Made in USA campaign, but it also seeks to supplant R&A's toy business. After intentionally disrupting R&A's supply chain

and ability to deliver goods to Wal-Mart, SC has now made repeated overtures to Wal-Mart in hopes of bypassing R&A. It is SC's desire and intention to assume a direct vendor relationship with Wal-Mart or, alternatively, to work with other vendors who are not a primary focus for the Made in USA initiative.

44. By working to undermine and displace R&A with Wal-Mart, SC stands to gain plenty. SC can eliminate the poster child of the Made in USA initiative while also preserving SC's own future for Wal-Mart's ride-on toy business.

45. In doing so, SC has tortiously interfered with R&A's business relationship with Wal-Mart, which has caused substantial damage to R&A.

Sales Chief's Misappropriation and Misuse of Trade Secrets

46. In the course of R&A and SC's close relationship, SC has learned confidential and proprietary information of R&A, including pricing information, logistical and timing information, and other confidential information relating to R&A's business.

47. For example, SC received confidential pricing calculations and information from R&A on August 8, 2014, as part of confidential communications between the parties' respective legal counsel.

48. The pricing information constitutes a trade secret because it derives independent economic value from not being generally known to others, and R&A has implemented sufficient measures to maintain its secrecy.

49. SC understood R&A's pricing information is highly confidential and valuable to R&A. Such pricing information includes the cost of logistics, carrying costs, customer service overhead, profit margins, and the price R&A charges Wal-Mart for ride-on toys.

50. On August 18, 2014, ten days after receiving R&A's confidential pricing information, SC secretly demanded a meeting with Wal-Mart representatives with the goal of exploring alternative business arrangements with Wal-Mart.

51. Rather than going through traditional channels of communication whereby a manufacturer (SC) typically contacts the retailer (Wal-Mart) through the vendor (R&A) relationship, SC did not notify R&A of SC's direct efforts to communicate with Wal-Mart and did not invite R&A to attend the meeting, even though R&A is the vendor of the products and SC is merely R&A's manufacturer.

52. SC's objective for the meeting was to bypass R&A and directly obtain Wal-Mart's business.

53. In response to SC's repeated demands to meet, Wal-Mart granted a meeting to SC and had such meeting on September 4, 2014.

54. R&A only learned of SC's secret communications because Wal-Mart proactively notified R&A of SC's backdoor maneuvering and extended an invitation for R&A to attend the September 4 meeting. If not for Wal-Mart's insistence on acting above-board, R&A might never have learned the deeper extent of SC's intentional and tortious interference with R&A's valuable business relationship with Wal-Mart.

55. At the September 4, 2014 meeting, SC met with representatives of Wal-Mart with the goal of bypassing R&A as the vendor. A representative of R&A attended the meeting. Because of R&A's presence, SC avoided making overt statements of its intention to misappropriate R&A's business during this meeting.

56. However, the following day, on September 5, 2014, SC was able to schedule another exclusive meeting with authorized representatives of Wal-Mart, and this time SC was

intent on excluding R&A from such meeting. During this September 5 meeting where R&A was absent, SC directly appealed to Wal-Mart for permission to sell the ride-on toys to Wal-Mart without R&A's involvement. SC's conduct represents intentional tortious interference with R&A's existing business relationship.

57. SC could only have made such overtures had it utilized R&A's trade secret pricing information and other confidential information in formulating the offer to Wal-Mart during SC's many attempts to bypass R&A and secure the ride-on toy business for itself.

58. All of the foregoing acts of SC—the breach of the parties' agreement, the tortious interference with R&A's business relationship, and the misappropriation and misuse of confidential and valuable business trade secrets—are interrelated parts of SC's overall tortious scheme to ruin R&A's business and thwart re-domestication of American manufacturing.

59. For instance, SC's material breach of the established trade credit terms disrupted R&A's ability to timely supply goods to Wal-Mart. The disruption of Wal-Mart's supply, in turn, generated an opening for SC to step into and offer to relieve the supply shortage it caused, both in the short-term and the long-term. SC's misappropriation of R&A's trade secret pricing information augmented SC's ability to offer very enticing terms to Wal-Mart, thereby increasing Wal-Mart's incentive to cease business with R&A in favor of SC.

60. By displacing or attempting to replace R&A as Wal-Mart's supplier prior to when R&A's local manufacturing facility can become operational, SC can ensure the demise of the local manufacturing operation because it depends on R&A maintaining Wal-Mart as a customer, while also securing a valuable business opportunity for SC.

Breach of Warranty of Non-Infringement of Patents

61. In 2012, R&A requested SC design and manufacture a children's ride-on vehicle in the style of a traditional California dune buggy. SC proposed R&A to invest in a product that would eventually be named the Monster Trax® Dirt Racer 22.

62. On September 10, 2012, prior to going to market with the Dirt Racer 22, R&A expressly requested that SC verify and confirm that the product did not infringe upon any United States patents. On September 14, 2012, SC expressly verified that the product did not infringe upon any United States patents.

63. Based on these express assurances, and understanding the implied warranty of non-infringement accompanies all goods, R&A purchased the Dirt Racer 22 product from SC and began selling it to Wal-Mart.

64. On March 19, 2013, after the product was already on shelves in Wal-Mart, R&A received a cease and desist letter from Fisher-Price, Inc., alleging that the Dirt Racer 22 infringed not one but five Fisher-Price patents. R&A and Fisher-Price became embroiled in federal litigation that ultimately resulted in an agreed judgment being entered against R&A for patent infringement. Such judgment has since been satisfied by R&A, and SC partially acknowledged responsibility for the issue by issuing a credit for some monies paid to Fisher-Price.

65. Beyond the liability to Fisher-Price, R&A was damaged as a direct and proximate result of SC's breach of warranty.

66. R&A had negotiated with Wal-Mart a lucrative opportunity for the Dirt Racer 22 product that did not materialize. Specifically, the Dirt Racer 22 was slated to be sold in 1,800 Wal-Mart stores, which is a very expansive offering for a product of that category and price point.

67. Actual sales in 900 stores (as part of an initial product release) were strong.

68. The infringement claims by Fisher-Price prompted Wal-Mart to remove the Dirt Racer 22 products from its stores, resulting in a loss of profits to R&A exceeding $3.8 million.

69. But for the demands by Fisher-Price upon Wal-Mart to remove the product from the shelves, the product would have been successful and profitable.

70. R&A was also compelled to defend against the patent infringement suit at great expense, and compromise settlement of the claims required a payment by R&A to Fisher-Price.

71. All such lost profits and expenses were proximately caused by SC's breach of its express and implied warranties of non-infringement.

COUNT I

BREACH OF CONTRACT – FINANCING TERMS

72. R&A incorporates by reference the allegations set forth in the foregoing paragraphs.

73. The parties' agreement is comprised of a series of production schedules, purchase orders and invoices which together set forth the parties' annualized agreement. Additional terms were supplied in the parties' course of dealing and course of performance.

74. For example, the Net 60 trade credit term was a material component of the parties' original agreement and was memorialized in the parties' first transaction on March 12, 2012. The parties consistently abided by the Net 60 term in every transaction thereafter for more than two years from March 2012 to May 2014.

75. Arkansas has adopted the Uniform Commercial Code ("UCC") to govern commercial transactions, unless the United Nations Convention on Contracts for the International Sale of Goods applies. *See* Ark. Code Ann. §§ 4-1-101 et seq. Because the

Republic of China is not a contracting state under the CISG, R&A understands the CISG does not apply.

76. Under Arkansas's UCC, "the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other." Ark. Code Ann. § 4-1-303(e).

77. The Net 60 trade credit term was a material part of the parties' course of dealings and constitutes a legally enforceable contractual term that was incorporated into R&A's orders for goods. SC accepted the orders under the agreed terms when it shipped the goods.

78. In violation of this contractual term, in May 2014 and thereafter SC refused to release goods to R&A without up-front, full prepayment. Such failure to deliver goods under the agreed terms constitutes a material breach of contract for which R&A is entitled to damages.

79. R&A is entitled to compensation for the loss of sales to Wal-Mart on already-booked goods, the incurrence of numerous costs associated with goods that were booked but never released, and most importantly, the loss of the manufacturing business which represents a wide range of damages including the loss of future profits and business opportunity, and the loss of future manufacturing business. These damages exceed $17 million.

COUNT II

BREACH OF CONTRACT – UNILATERAL PRICE CHANGE

80. R&A incorporates by reference the allegations set forth in the foregoing paragraphs.

81. In addition to unilaterally retracting the trade credit terms in May 2014, the prior year in May 2013 SC also unilaterally increased the cost of the goods by 5% after booking. That is, after R&A and SC together had planned and agreed upon the scope of their entire production

schedule for the 2013 year, which contemplated the prevailing price for the goods under contract, and after R&A had already contracted with Wal-Mart for the resale of such goods at a particular price based on the agreed production schedule and pricing regime, SC unilaterally declared that it would not adhere to the parties' agreed price terms nearly halfway through the production cycle.

82. Due to the replenishment cycle in the retail industry where retailers like Wal-Mart order their goods many months in advance of delivery, R&A was refused opportunity to renegotiate price terms with its customers.

83. R&A seasonably notified SC of its objection to the improper change in price terms and conditioned its acceptance of the goods with a reservation of its right to offset or recover damages.

84. The price term was material to the contract between the parties, and SC breached such term by unilaterally declaring a price hike at a time when R&A had no options to find alternative sources of the goods.

85. As a direct consequence of SC's unilateral price increase, which was not contemplated in the parties' original agreement, R&A suffered damages in excess of $500,000. Such amounts are demonstrable by modified price sheets set forth after product had already been shipped.

COUNT III

TORTIOUS INTERFERENCE WITH EXISTING BUSINESS RELATIONSHIP

86. R&A incorporates by reference the allegations set forth in the foregoing paragraphs.

87. During the relevant period, R&A had a valid and existing contractual relationship and business expectancy with Wal-Mart.

88. SC had personal knowledge of R&A's contractual relationship and business expectancy with Wal-Mart.

89. SC intentionally interfered with R&A's contractual relationship and business expectancy, which induced or caused a termination of the relationship and expectancy.

90. SC's interference was improper in that it directly and intentionally impeded R&A's ability to fulfill its obligations to Wal-Mart, in breach of SC and R&A's own agreement, and SC misappropriated and used R&A's confidential pricing information in furtherance of its interference. SC also repeatedly contacted Wal-Mart with the purpose of casting R&A in a bad light in support of its efforts to undermine and displace R&A.

91. SC's interference resulted in damages to R&A exceeding $17 million.

COUNT IV

MISAPPROPRIATION AND MISUSE OF TRADE SECRETS

92. R&A incorporates by reference the allegations set forth in the foregoing paragraphs.

93. R&A's pricing information derives independent economic value from not being generally known to, and not being readily ascertainable by, other persons who can obtain economic value from its disclosure or use.

94. R&A's pricing information is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

95. R&A's pricing information constitutes a trade secret under Arkansas law.

96. SC acquired R&A's valuable pricing information in connection with confidential communications between the parties' legal counsel on the insistence of SC.

97. SC knew that its understanding of R&A's pricing information was acquired under circumstances giving rise to a duty to maintain its secrecy and not to use it for commercial gain.

98. In violation of the Arkansas Trade Secrets Act, SC used R&A's pricing information without express or implied consent of R&A to gain an illegal and unfair competitive advantage in negotiations with Wal-Mart.

99. In violation of the Arkansas Trade Secrets Act, SC, without express or implied consent of R&A, shared such pricing information with other vendors who are competitors of R&A.

100. SC's intent was to use R&A's trade secret information to undercut R&A and offer to sell Wal-Mart the ride-on toys at a favorable price, either directly or using a replacement vendor.

101. SC's theft of trade secrets has damaged and will continue to damage R&A. Such injury is not fully compensable by economic damages and is causing irreparable injury to R&A.

COUNT V

BREACH OF WARRANTY OF NON-INFRINGEMENT

102. R&A incorporates by reference the allegations set forth in the foregoing paragraphs.

103. In connection with SC's sale of the Dirt Racer 22 ride-on toy product to R&A, SC expressly warranted that the product did not infringe any United States patents.

104. Under Article 2 of the Uniform Commercial Code, SC, as a merchant dealing in goods of the kind, also impliedly warranted that the goods did not infringe.

105. SC breached its express and implied warranty of non-infringement by selling to R&A products that infringed one or more of Fisher-Price's patents.

106. R&A gave SC timely written notice of Fisher-Price's infringement claims and the ensuing litigation. SC elected not to formally participate in preparing a legal defense to the patent infringement claims.

107. SC is liable to R&A for damages caused by SC's breach of warranty of non-infringement, which exceed $3.8 million.

WHEREFORE, Plaintiff prays for the following relief:

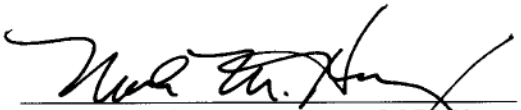
A. Compensation for damages under Counts I – V, in excess of $20 million;

B. An award of attorneys' fees, costs and expenses;

C. Any and all other relief that this Court deems proper; and

D. Plaintiff requests a trial by jury.

REDMAN & ASSOCIATES, LLC



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